ORIGINAL

Blake A. Field VS Google, Inc., Doc. 28

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Attorneys for Defendant GOOGLE INC.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BLAKE A. FIELD, Plaintiff, vs. GOOGLE INC., Defendant.	No. CV-S-04-0413-RCJ-LRL
AND RELATED COUNTERCLAIMS	**DEFENDANT'S MOTION TO EXTEND DISCOVERY**

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Defendant Google Inc., by and through its attorneys, Snell & Wilmer L.L.P. and Wilson Sonsini Goodrich & Rosati, hereby moves this Court for an extension of time within which to conduct discovery.

This Motion is made and based upon the Memorandum of Points and Authorities submitted herewith, the Declaration of Lance G. Kavanaugh attached hereto as Exhibit 1, and upon such other matters to be adduced by the Court at the hearing hereof.

DATED this 19th day of May, 2005.

SNELL & WILMER L.L.P

By: [signature]
Kelly A. Evans, Nevada Bar No. 7691
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Las Vegas, Nevada 89109

and

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

On April 13, 2005, this Court entered a Stipulation and Order for Extension of Time for Fact Discovery to Complete Certain Depositions (First Request), which provided that the deadline for completion of the deposition of Plaintiff and certain 30(b)(6) depositions of Defendant be extended to May 20, 2005, and that the April 29, 2005 deadline for the close of fact discovery apply to all other discovery.

Good cause exists for the extension requested herein. The requested extension is required because of scheduling difficulties which caused the delay of the depositions in this case. Because of the conflicting work and travel schedules of the parties, the earliest available date for the deposition of Plaintiff is now June 3, 2005. This delay necessitates pushing back

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the remaining discovery deadlines to allow the parties' experts to fully address any issues raised during this deposition.

II.

STATEMENT OF FACTS

A. Completed Discovery

Plaintiff served one set of interrogatories, one set of requests for production, and one set of requests for admissions on Defendant Google by mail on March 25, 2005. Google served responses to Plaintiff's written discovery by mail on May 10, 2005.

Google served one set of interrogatories, one set of requests for production, and one set of requests for admission on Plaintiff by hand delivery on March 30, 2005. Plaintiff served responses to Google's written discovery by mail on May 10, 2005.

On May 13, 2005, Plaintiff deposed a corporate designee of Google pursuant to Fed. R. Civ. P. 30(b)(6) on the following topics: (1) the standard operation of the Google cache; and (2) the inclusion of Plaintiff's works listed in the First Amended Complaint in the Google cache. On May 17, 2005, Plaintiff informed Google that he would not be taking the deposition of Google's corporate designee on the remaining Fed. R. Civ. P. 30(b)(6) topic.

B. Discovery That Remains To Be Completed

The deposition of Plaintiff, currently scheduled for June 3, 2005, remains to be completed. Expert disclosures, rebuttal expert disclosures, and expert depositions also remain to be completed.

C. Need For Extension

The need for an extension arises from the fact that the parties previously agreed to extend the deadline for fact discovery in this case, but inadvertently failed to consider the need to simultaneously extend the deadlines for expert disclosures. As a result under the current discovery deadlines and pursuant to Fed. R. Civ. P. 26(a)(2), Google must prepare an expert report setting forth *all* opinions to be expressed by its expert without having the opportunity to depose the sole witness in Plaintiff's case -- the Plaintiff himself -- and without having meaningful interrogatory responses from the Plaintiff. (Kavanaugh Declaration, ¶ 3, attached

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hereto as Exhibit 1)

III

ARGUMENT

During a telephone conversation on May 17, 2005, Plaintiff recognized this issue and agreed to extend the expert deadlines by a month. In reliance on that agreement, Google stopped preparing its expert disclosure. Then, during a telephone conversation on May 18, 2005, Plaintiff stated that he had changed his mind, and refused to sign a stipulation to extend the expert deadlines as he had already agreed to do. (Kavanaugh Decl., ¶ 4)

Google will be unfairly prejudiced if the expert discovery deadlines are not extended in accordance with the parties' verbal agreement. Given Plaintiff's request to continue his deposition and his failure to provide meaningful responses to Google's interrogatories, Google lacks important factual information upon which its expert, John R. Levine, would base his final opinions. Without adequate written discovery responses or the deposition of Plaintiff, Dr. Levine's expert report will necessarily be incomplete. (Kavanaugh Decl., ¶ 5)

Google is not proposing any extension of pre-trial dates. Thus, Plaintiff will not be prejudiced in any way by this extension of discovery deadlines. Plaintiff's refusal to sign the stipulation he agreed to seems to be based upon a desire to obtain an advantage by forcing Google to submit its expert disclosure before obtaining highly relevant factual information. (Kavanaugh Decl., ¶ 6)

Google has been diligent in its attempts to schedule the deposition of Plaintiff. On April 26, 2005, Google served notice of the deposition of Plaintiff by U.S. mail. The deposition was to be taken on May 12, 2005 at the offices of Snell & Wilmer L.L.P. in Las Vegas, Nevada. Attached as Exhibit A is a true and correct copy of the Notice of Deposition of Plaintiff Blake A. Field. (Kavanaugh Decl., ¶ 7)

Because Google's 30(b)(6) witness was only available on May 13, 2005, the parties agreed to reschedule Plaintiff's deposition. Attached as Exhibit B is a true and correct copy of email to Plaintiff dated May 5, 2005 stating that Plaintiff's deposition would need to be rescheduled based upon the availability of Google's corporate designee. (Kavnaugh Decl., ¶ 8)

Plaintiff has since requested that his deposition be conducted on June 3, 2005, and it has been rescheduled for that date.

IV

CONCLUSION

For the foregoing reasons, Google requests this Court for an extension of the existing discovery as follows:

1. Extension of fact discovery to complaint deposition of Plaintiff: June 4, 2005.
2. Designation of experts: June 20, 2005.
3. Designation of rebuttal experts: July 11, 2005.
4. Expert discovery: August 1, 2005.
5. Dispositive motions: August 29, 2005.
6. Joint Pretrial Order: September 16, 2005.

Dated: May 19th, 2005

SNELL & WILMER L.L.P.

By: [signature]

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and
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CERTIFICATE OF MAILING

I certify that a true and correct copy of the foregoing DEFENDANT'S MOTION TO EXTEND DISCOVERY was served this 19 day of May, 2005, by placing same in the United States mail, postage prepaid, addressed to the following:

Blake A. Field
3750 Doris Place
Las Vegas, NV 89120
Pro Se Plaintiff

Judith B. Walker
An employee of Snell & Wilmer L.L.P.

85371.1

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BLAKE A. FIELD, Plaintiff, vs. GOOGLE INC., Defendant.	No. CV-S-04-0413-RCJ-LRL **DECLARATION OF LANCE G. KAVANAUGH IN SUPPORT OF DEFENDANT GOOGLE INC.'S MOTION TO EXTEND DISCOVERY**
AND RELATED COUNTERCLAIMS	

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I, Lance G. Kavanaugh, declare as follows:

1. I am an attorney at Wilson Sonsini Goodrich & Rosati, counsel for defendant Google Inc. ("Google") in this lawsuit. I am over the age of eighteen and competent to make this declaration. I make each of the following statements based on my personal knowledge, and I could, if necessary, testify to the truth of each of them.

2. I submit this declaration in support of Google's *ex parte* motion to extend discovery. On May 17, 2005, *pro se* plaintiff Blake A. Field (the "Plaintiff") and I verbally agreed to extend expert discovery deadlines, but Plaintiff later reneged.

3. The need for an extension arises from the fact that the parties previously agreed to extend the deadline for fact discovery in this case, but inadvertently failed to consider the need to simultaneously extend the deadlines for expert disclosures. As a result, under the current discovery deadlines and pursuant to Fed. R. Civ. P. 26(a)(2), Google must prepare an expert report setting forth *all* opinions to be expressed by its expert without having the opportunity to depose the sole witness in Plaintiff's case – the Plaintiff himself – and without having meaningful interrogatory responses from the Plaintiff.

4. During a telephone conversation on May 17 2005, Plaintiff recognized this issue and agreed to extend the expert deadlines by a month. In reliance on that agreement, Google stopped preparing its expert disclosure. Then, during a telephone conversation on May 18, 2005, the Plaintiff stated that he had changed his mind, and refused to sign a stipulation to extend the expert deadlines as he had already agreed to do.

5. Google will be unfairly prejudiced if the expert discovery deadlines are not extended in accordance with the parties' verbal agreement. Given Plaintiff's request to continue his deposition and his failure to provide meaningful responses to Google's interrogatories, Google lacks important factual information upon which its expert, John R. Levine, would base his final opinions. Without adequate written discovery responses or the deposition of the Plaintiff, Dr. Levine's expert report will necessarily be incomplete.

6. Google is not proposing any extension of pre-trial dates. Thus, the Plaintiff will not be prejudiced in any way by this extension of discovery deadlines. Plaintiff's refusal to sign the

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stipulation he agreed to seems to be based upon a desire to obtain an advantage by forcing Google to submit its expert disclosure before obtaining highly relevant factual information.

7. Google has been diligent in its attempts to schedule the deposition of Plaintiff. On April 26, 2005, Google served notice of the deposition of Plaintiff by U.S. Mail. The deposition was to be taken on May 12, 2005 at the offices of Snell & Wilmer L.L.P. in Las Vegas, Nevada. Attached as Exhibit A is a true and correct copy of the Notice of Deposition of Plaintiff Blake A. Field.

8. Because Google's 30(b)(6) witness was only available on May 13, 2005, the parties agreed to reschedule Plaintiff's deposition. Attached as Exhibit B is a true and correct copy of email to Plaintiff dated May 5, 2005 stating that Plaintiff's deposition would need to be rescheduled based upon the availability of Google's corporate designee.

9. Plaintiff has since requested that his deposition be conducted on June 3, 2005, and it has been scheduled for that date.

I declare under penalty of perjury under the laws of the laws of the United States of America that the foregoing is true and correct. Executed on May 18, 2005, at Palo Alto, California.

Lance G. Kavanaugh

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BLAKE A. FIELD, Plaintiff, vs. GOOGLE INC., Defendant. AND RELATED COUNTERCLAIMS	No. CV-S-04-0413-RCJ-LRL **NOTICE OF DEPOSITION OF PLAINTIFF BLAKE A. FIELD**

TO ALL PARTIES AND ATTORNEYS OF RECORD IN THIS ACTION:

PLEASE TAKE NOTICE that pursuant to the Federal Rules of Civil Procedure, defendant Google Inc. will take the deposition of plaintiff Blake A. Field on Thursday, May 12, 2005 at the offices of Snell & Wilmer, 3800 Howard Hughes Parkway, Suite 1000, Las Vegas, Nevada 89109. The deposition will begin at 9:00 a.m. and will continue until completed, subject to the time constraints of Fed. R. Civ. P. 30. The deposition will be taken before a notary public or other person authorized under law to administer an oath and will be recorded by stenographic and videographic means, and LiveNote may be used.

Dated: April 2[illegible], 2005

SNELL & WILMER L.L.P.

By:

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and
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CERTIFICATE OF MAILING

I certify that a true and correct copy of the foregoing NOTICE OF DEPOSITION OF PLAINTIFF BLAKE A. FIELD was served this 26 day of April, 2005, by placing same in the United States mail, postage prepaid, addressed to the following:

Blake A. Field
3750 Doris Place
Las Vegas, NV 89120
Pro Se Plaintiff

An employee of Snell & Wilmer, L.L.P.

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Kavanaugh, Lance

From: Kavanaugh, Lance
Sent: Thursday, May 05, 2005 7:13 PM
To: 'bfield@thedictum.com'
Cc: Kramer, David
Subject: Deposition scheduling

Blake,

Google's designee for the following two 30(b)(6) topics is available for deposition on Friday, May 13, 2005 in Palo Alto:

* The standard operation of the Google cache; and
* The inclusion of Plaintiffs works listed in the First Amended Complaint in the Google Cache.

Please confirm that this date is acceptable by 12 p.m. PDT tomorrow. If we do not receive confirmation from you by then, we cannot guarantee that the witness will remain available at that time. I've left you voicemail regarding this as well but haven't heard back.

Note that if this date is acceptable, we will need to reschedule your deposition, which is currently noticed for May 12.

-Lance